

9.13.00.00 - SETTLEMENT AND DISMISSAL

9.13.01.00 Settlement by Judgment After Entry Into Right of Way Contract

In some cases where a negotiated settlement has been made with the owner through a Right of Way Contract, it may be necessary to secure a Judgment in Condemnation for technical reasons, such as clearing the title. Before Judgment in Condemnation is secured, a written agreement should be entered into with the owner or the owner's attorney providing for the cancellation of all contractual obligations included in the Judgment. Failure to do this creates duplicate obligations.

The Agreement of Cancellation should be executed in duplicate and distributed as follows:

- One copy to the owner or the owner's attorney.
- One copy affixed to the executed original Contract in the District file.

If the owner, or the owner's attorney, refuses to enter into such a written agreement, the District should submit complete information to the Regional Legal Office with a request for instructions on how to proceed to complete the acquisition.

A DM-8 clause must be included in the Deed whenever the State has the right to take possession under Court order or has taken actual possession through Right of Entry or OP.

9.13.02.00 Settlement by Right of Way Contract

Whenever a parcel included in a condemnation suit is settled by Right of Way Contract, the action shall be dismissed. If a security deposit has been made for an OP, provision should be made for its release.

The District should not request a dismissal until it obtains consent from all attorneys who have filed an answer alleging an interest in the parcel. The attorneys representing such interests should be advised of the proposed settlement and the provisions concerning the distribution of the payment.

9.13.03.00 Settlement After Withdrawal of Deposit

Whenever a withdrawal of funds has been made by the owner and a negotiated settlement is subsequently reached, the Contract shall include a provision wherein the owner acknowledges receipt of the amount withdrawn as a credit to the State against the total payment provided for in the Contract. A similar provision shall also be included if settlement is by stipulated judgment.

9.13.04.00 Approval of Stipulated Judgments

The District will secure approval from HQ RW before entering into a Stipulated Judgment whenever:

- The amount of the stipulation is substantially in excess of the highest value based upon an authorized appraisal report that would have been testified to if the action had proceeded to trial.
- When the proposed payment is not substantially at variance with the authorized appraisal report but where the settlement (with the exception of the form of the instrument) does not conform to the criteria and conditions for district-approved contracts. (See Acquisition Chapter.)
- When it is proposed to exchange noncontiguous excess land. (See Acquisition Chapter.)

After approval is secured by letter, fax, or telephone, the District shall submit to HQ RW a Memorandum of Settlement fully explaining the details of the stipulated settlement.

9.13.05.00 Dismissal and Release - Settlement by Right of Way Contract or Judgment

The Order for Release of Deposit can be combined with the Order for Dismissal of the action on condemnation parcels settled by Right of Way Contract. The District should notify the Regional Legal Office when an OP has been taken and the parcel has subsequently been settled by either an FOC or Contract. Notification should be made in sufficient time so that the Release of Deposit can be prepared and filed immediately following recordation of the FOC or the Deed vesting the property in the

State. Such notice shall cite the Superior Court case number and condemnation parcel number.

filed. If an abandonment is contemplated, the District should consult with the Regional Legal Office.

9.13.06.00 **Abandonment of Proceedings**

Under certain circumstances the Department may abandon all or part of a parcel after suit has been